

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
) Case No. 1:21-cr-360-DCN
Plaintiff,)
) Cleveland, Ohio
vs.) Tuesday, October 5, 2021
)
BRIAN ROSS,)
) CHANGE OF PLEA VIA
Defendant.) VIDEOCONFERENCE
)

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE WILLIAM H. BAUGHMAN, JR.,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:

OFFICE OF THE U.S. ATTORNEY - CLEVELAND
BY: ROBERT J. KOLANSKY, AUSA
801 West Superior Avenue, Suite 400
Cleveland, OH 44113
(216) 622-3780

(Appearances continued on Page 2)

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(216) 357-7035

Proceedings recorded by electronic sound recording; transcript
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APPEARANCES CONTINUED:

For the Defendant:

THE ALBENZE LAW GROUP LLC
BY: STEVE ALBENZE, ESQ.
124 Middle Avenue, Suite 900
Elyria, OH 44035
(440) 523-1783

* * * * *

1 CLEVELAND, OHIO; TUESDAY, OCTOBER 5, 2021; 2:01:22 P.M.

2 --oOo--

3 P R O C E E D I N G S

4 COURTROOM DEPUTY: The case before the Court today is
5 1:21-cr-360, the United States of America vs. Brian Ross.

6 THE COURT: Counsel for the United States, are you
7 ready to proceed?

8 MR. KOLANSKY: Good afternoon, Your Honor,
9 Robert Kolansky for the United States. Ready to proceed at
10 this time.

11 THE COURT: And counsel for Mr. Allen -- Mr. Ross, are
12 you ready to proceed?

13 MR. ALBENZE: I am, Your Honor. Steve Albenze, as
14 substitution counsel for Attorney Michael Kinlin, here with my
15 client, the defendant.

16 THE COURT: Mr. Ross, you have a right to appear in
17 person in court for this change of plea. Given the national
18 emergency in which we find ourselves, and under recent general
19 orders of this court and the CARES Act, proceedings such as
20 this change of plea are permitted to be conducted by
21 videoconference to protect the health of everyone involved.

22 Now, have you spoken with your attorney regarding your
23 right to appear in person and --

24 THE DEFENDANT: Yes.

25 THE COURT: -- that right to permit this proceeding to

1 go forward by videoconference?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you waive your right to appear in
4 person for this arraignment --

5 THE DEFENDANT: I do --

6 THE COURT: -- for this guilty plea and consent to
7 have the hearing conducted by videoconference?

8 THE DEFENDANT: Yes.

9 THE COURT: I find your waiver of personal appearance
10 and your consent to go forward by videoconference have been
11 knowingly, voluntarily, and intelligently made. I accept your
12 waiver and your consent, and we'll proceed with this
13 Plea Hearing with Mr. Ross participating by videoconference.

14 Now, given the unique circumstances in which we find
15 ourselves, and the fact that some hearings in this case may be
16 conducted by videoconference, there may be times during the
17 course of the case that, after consulting with you, your
18 attorney may need to sign on your behalf documents related to
19 the case. The situation may arise where you and your attorney
20 do not appear together for the court proceeding because both of
21 you are appearing by videoconference. It shouldn't be a
22 problem today because, as I understand it, you're both in the
23 same location, but in any event, do you understand why your
24 attorney, after consulting with you and obtaining your
25 approval, may at times need to sign on your behalf documents

1 related to the case?

2 THE DEFENDANT: Yes.

3 THE COURT: And do you authorize your counsel to sign
4 on your behalf in those limited situations after consulting
5 with you and obtaining your approval?

6 THE DEFENDANT: Yes.

7 THE COURT: Now this admonishment is for the attorneys
8 for the government.

9 Under the Due Process Protections Act, the Court
10 reminds the government of its obligations under *Brady vs.*
11 *Maryland*, 373 United States Reports, Page 83, a 1963 decision
12 of the Supreme Court, to disclose evidence favorable to the
13 defendant and material to the defendant's guilt or punishment.
14 The government is ordered to comply with *Brady* and its progeny.
15 The failure to do so in a timely manner may result in
16 consequences, including dismissal of the Indictment, exclusion
17 of government witnesses or evidence, adverse jury instructions,
18 dismissal of charges, contempt proceedings, sanctions by the
19 Court, and other remedies that may be just under the
20 circumstances. I will issue this order by way of a docket
21 entry memorializing these admonishments.

22 (Brief pause in proceedings).

23 THE COURT: Now, Mr. Ross, I have been advised that
24 you wish to plead guilty to certain charges that are made in
25 the Indictment; is that correct?

1 THE DEFENDANT: Yes.

2 THE COURT: And I also understand that you have
3 consented to have me, as the magistrate judge assigned to this
4 case, receive your plea; is that correct?

5 THE DEFENDANT: Yes.

6 THE COURT: Clerk will mark a copy of the consent to
7 my jurisdiction as Exhibit 1, and is that signed? Yes, it is.

8 Now, did you consent -- did you discuss this consent
9 with your attorney before you signed it?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that you have a right to
12 offer your guilty plea to a United States District Judge?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that by giving this
15 consent to my jurisdiction you give up the right to offer your
16 guilty plea to the assigned district judge?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you still want to proceed with a plea
19 before me?

20 THE DEFENDANT: Yes.

21 THE COURT: For purposes of accepting your guilty plea
22 I will be asking you a series of questions. The court reporter
23 will record my questions and your answers. The court reporter
24 can only record a verbal answer. She cannot record a nod of
25 the head or other gesture, so please verbalize your answers.

1 If you don't understand any of the questions, or at
2 any time you want to consult with your attorney before you
3 answer, please say so because it's essential to a valid plea
4 that you understand each question before you answer it.

5 None of my questions are meant or designed to
6 embarrass you.

7 Do you understand these instructions?

8 THE DEFENDANT: Yes.

9 THE COURT: You have the right to remain silent and
10 the right not to incriminate yourself.

11 You are not required to make a statement, and anything
12 you say may be used against you.

13 Before receiving your guilty plea there are a number
14 of questions I will ask to assure myself that your plea is
15 valid. By answering these questions you will be making
16 statements against your interest and you will incriminate
17 yourself.

18 Do you understand that by proceeding here with a
19 guilty plea you will necessarily be giving up your right to
20 remain silent and your right not to incriminate yourself?

21 THE DEFENDANT: Yes.

22 THE COURT: Mr. DeVan, please administer the oath
23 to Mr. Ross.

24 COURTROOM DEPUTY: Mr. Ross, can you please raise your
25 right hand?

1 Do you solemnly swear that the testimony in this case
2 will be the truth, the whole truth, and nothing but the truth,
3 so help you God?

4 THE WITNESS: I do.

5 COURTROOM DEPUTY: Thank you.

6 THE COURT: Mr. Ross, you've now been sworn and you
7 are under oath to tell the truth. Your answers to my questions
8 will be subject to penalties of perjury if you do not tell the
9 truth.

10 Do you understand these instructions?

11 THE DEFENDANT: Yes.

12 THE COURT: You have a right to be represented by an
13 attorney throughout the case. As I mentioned to you earlier,
14 if you cannot afford an attorney, one will be appointed to
15 represent you.

16 Have you had enough time to discuss the charges made
17 against you and your response to those charges with your
18 attorney?

19 THE DEFENDANT: Yes.

20 THE COURT: Have you told your attorney everything you
21 know about the case?

22 THE DEFENDANT: Yes.

23 THE COURT: Are you completely satisfied with your
24 attorney's representation and with the advice that he has given
25 you?

1 THE DEFENDANT: Yes.

2 THE COURT: As part of this proceeding I must
3 determine your -- that you are competent to understand the
4 proceedings and to enter a knowing plea.

5 What is your full name?

6 THE DEFENDANT: Brian Anthony Ross.

7 THE COURT: And how old are you?

8 THE DEFENDANT: 53.

9 THE COURT: Are you a citizen of the United States?

10 THE DEFENDANT: Yes.

11 THE COURT: And how far did you go in school?

12 THE DEFENDANT: I have an associate's degree in
13 business.

14 THE COURT: Are you currently on probation, parole, or
15 supervised release for any state or federal conviction?

16 THE DEFENDANT: Other than this one, no.

17 THE COURT: Within the past year have you been
18 hospitalized or treated for a mental illness?

19 THE DEFENDANT: No.

20 THE COURT: Within the past year have you been
21 hospitalized or treated for alcohol addiction?

22 THE DEFENDANT: No.

23 THE COURT: Within the past year have you been
24 hospitalized or treated for addiction to any narcotic drug?

25 THE DEFENDANT: No.

1 THE COURT: In the past 24 hours have you taken any
2 medication, drugs, or alcohol?

3 THE DEFENDANT: Just my prescribed medication.

4 THE COURT: Has your consumption of that medication
5 affected your ability to understand what's happening in these
6 proceedings today?

7 THE DEFENDANT: No.

8 THE COURT: What is your understanding of what we're
9 doing here this afternoon?

10 THE DEFENDANT: My understanding is that we're coming
11 to agreement on the charges that have been leveled against me
12 to get a means to an end.

13 THE COURT: So you understand you're pleading guilty?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Kolansky, do you have any doubt as to
16 the defendant's competence to plead at this time?

17 MR. KOLANSKY: No, I do not, Your Honor. Thank you.

18 THE COURT: Mr. Albenze, do you have any doubt as to
19 Mr. Ross' competence to plead at this time?

20 MR. ALBENZE: No, Your Honor, I have no doubt in his
21 competence to plead.

22 THE COURT: Did I pronounce your name correctly?

23 MR. ALBENZE: Albenze, absolutely.

24 THE COURT: Okay. Very good.

25 MR. ALBENZE: Most people slaughter it the first time,

1 so you did very well.

2 THE COURT: Well, thank you.

3 Mr. Ross, by proceeding with a guilty plea you will
4 give up certain constitutional rights. I will next review with
5 you those rights and establish that you understand the rights
6 you will be giving up by pleading guilty.

7 You have a right to stand by your plea of not guilty
8 and to require the government to proceed to a trial.

9 You have a right to a trial by jury, including
10 assistance of counsel at trial.

11 At such trial, you would be presumed to be innocent.
12 The government would be required to prove you guilty by
13 competent evidence beyond a reasonable doubt. You would not
14 have to prove that you are innocent.

15 Do you understand these rights?

16 THE DEFENDANT: Yes.

17 THE COURT: And do you understand that by pleading
18 guilty you will be giving up these rights?

19 THE DEFENDANT: Yes.

20 THE COURT: You have the right to compulsory process,
21 that is, at trial, you have the right to the issuance of
22 subpoenas to require the attendance of witnesses to testify in
23 your defense.

24 Do you understand this right?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand that by pleading guilty
2 you will be giving up this right?

3 THE DEFENDANT: Yes.

4 THE COURT: You have the right to hear, see, and
5 cross-examine all witnesses that the United States may present
6 against you at trial.

7 Do you understand these rights?

8 THE DEFENDANT: Yes.

9 THE COURT: You understand that by pleading guilty you
10 will be giving up these rights?

11 THE DEFENDANT: Yes.

12 THE COURT: You have the right to remain silent at
13 trial. While you have the right to testify, if you chose to do
14 so, you would also have the right not to testify and no
15 inference or suggestion of guilt could be drawn from the fact
16 that you did not testify.

17 Do you understand this right?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you under- -- do you understand that by
20 pleading guilty you will be giving up this right?

21 THE DEFENDANT: Yes.

22 THE COURT: Again, as I told you earlier, if you
23 proceed with a guilty plea, you'll give up your right not to
24 incriminate yourself. I will ask you questions shortly about
25 what you did in order to satisfy myself that you are guilty as

1 charged. You will have to admit your guilt to make a valid
2 guilty plea.

3 Do you understand your right not to incriminate
4 yourself?

5 THE DEFENDANT: Yes.

6 THE COURT: You understand that by pleading guilty you
7 will be giving up that right?

8 THE DEFENDANT: Yes.

9 THE COURT: If you plead guilty and the district judge
10 accepts your plea, do you understand that you will give up your
11 right to a trial and to the other rights I just told you about?

12 THE DEFENDANT: Yes.

13 THE COURT: You understand that there will be no
14 trial?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that the district judge
17 will enter a judgment of guilty and sentence you on the basis
18 of your guilty plea after considering a Pre-Sentence Report?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand the offenses to which
21 you are pleading guilty are felony offenses and that a judgment
22 of guilty may deprive you of valuable civil rights, such as the
23 right to vote, the right to hold public office, the right to
24 serve on a jury, and the right to possess any kind of a
25 firearm?

1 THE DEFENDANT: Yes.

2 THE COURT: The clerk will mark a copy of the
3 Indictment as Exhibit 2 for this hearing.

4 Do you have a copy of that Indictment, Mr. Ross?

5 THE DEFENDANT: I do.

6 THE COURT: And have you discussed with your attorney
7 the charges in the Indictment to which you intend to plead
8 guilty?

9 THE DEFENDANT: Yes.

10 THE COURT: And do you understand the charges made in
11 the Indictment --

12 THE DEFENDANT: Yes.

13 THE COURT: -- against you?

14 Mr. Kolansky, please summarize the charges to which
15 the defendant intends to plead guilty, describe the offense and
16 also the penalty for those offenses.

17 MR. KOLANSKY: Certainly, Your Honor.

18 The Plea Agreement contemplates the defendant will
19 plead guilty to Counts One through Three, each of which charges
20 a violation of Title 21 United States Code § 841(a)(1) and
21 (b)(1)(C) for Distribution of a Controlled Substance. Each
22 offense counts -- carries a maximum 20 years incarceration, a
23 maximum \$1 million fine, minimum 3 years of supervised release
24 up to life, and a \$100 special assessment.

25 The plea to Count Four would be for violation of

1 Title 21 United States Code § 841(a)(1) and (b)(1)(C), this for
2 possession of a controlled substance with the intent to
3 distribute it. It carries the same penalties as the first
4 three counts, that is, maximum 20 years incarceration, maximum
5 \$1 million fine, minimum 3 years of supervised release up to
6 life, and a \$100 special assessment.

7 Count Five charges a violation of Title 21 United
8 States Code § 841(a)(1) and (b)(1)(B), as in boy, for
9 possession of a controlled substance with the intent to
10 distribute. Carries a mandatory minimum 5 years incarceration,
11 maximum 40 years, maximum \$5 million fine, minimum 4 years of
12 supervised release up to life, and a \$100 special assessment.

13 Count Six charges a violation of Title 18 United
14 States Code § 922(g)(1) for possession of a firearm and/or
15 ammunition by a convicted felon. Carries a maximum 10 years
16 incarceration, maximum -- it states here \$1 million fine but I
17 believe, Your Honor, that should be a \$250,000 fine, it carries
18 a minimum 3 years of supervised release up to life, and a \$100
19 special assessment.

20 Finally, Count Seven is a violation of Title 18 United
21 States Code § 924(c)(1)(A) for Possession of a Firearm in
22 Furtherance of a Drug Trafficking Crime. This carries a
23 minimum 60 months incarceration consecutive to the other
24 counts, maximum imprisonment of life. There is a maximum
25 \$250,000 fine, maximum supervised release is 5 years, and

1 there's a \$100 special assessment.

2 THE COURT: Mr. Ross, is your decision to plead --
3 first of all, one more matter.

4 Do you understand the maximum possible penalties for
5 the offenses with which you're charged in the Indictment are as
6 stated for the record by Mr. Kolansky?

7 THE DEFENDANT: Yes.

8 THE COURT: Is the decision to plead guilty the result
9 of an exercise of your own free will?

10 THE DEFENDANT: Yes.

11 THE COURT: Has anyone threatened you or anyone else
12 or forced you in any way to plead guilty?

13 THE DEFENDANT: No.

14 THE COURT: Have you entered into a written
15 Plea Agreement with the government?

16 THE DEFENDANT: Yes.

17 THE COURT: Clerk will mark a copy of the
18 Plea Agreement as Exhibit 3 to this hearing.

19 And do counsel and Mr. Ross have a copy of that
20 agreement?

21 MR. ALBENZE: We do, Your Honor.

22 THE COURT: Mr. Ross, I direct your attention to the
23 last page of the Plea Agreement, that being Page 12.

24 Is that your signature on Page 12 of the
25 Plea Agreement?

1 THE DEFENDANT: Yes.

2 THE COURT: Now, did you read and discuss the
3 Plea Agreement with your attorney before you signed it?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand the terms of the
6 Plea Agreement?

7 THE DEFENDANT: I do.

8 THE COURT: Now, Mr. Kolansky, will you please
9 succinctly summarize the substance of the Plea Agreement for
10 the record?

11 MR. KOLANSKY: Certainly, Your Honor.

12 The Plea Agreement contemplates the defendant will
13 plead to the Indictment, each of Counts One through Seven that
14 I read onto the record a moment ago, that he would pay a
15 special assessment of \$100 per count for a total of \$700.
16 There is an agreement to forfeiture of \$1,980 in United States
17 currency, a Taurus handgun, an Iver Johnson Cadet handgun, a
18 Cobra model .38 handgun.

19 The Plea Agreement contemplates that the United States
20 will not bring any other charges against the defendant known to
21 the United States basically on the date of the execution of
22 this agreement relating to conduct charged within the
23 Indictment described in the factual basis or otherwise
24 currently within the knowledge of the United States Attorney's
25 Office.

1 Further, it indicates that there's no agreement about
2 the defendant's Criminal History Category, that that will be
3 determined after a Pre-Sentence Report is prepared.

4 There's no agreement about the sentence or sentencing
5 range and that each party is free to recommend whatever
6 sentence it believes to be appropriate.

7 It does outline the stipulated guideline computation
8 that the parties agree that the drugs distributed in Counts One
9 through Three and possessed with the intent to distribute,
10 Counts Four and Five, was a total of 40.94 grams of cocaine
11 base, or crack, which corresponds to a Base Offense Level of 24
12 under the guidelines. Further, the Plea Agreement states that
13 the defendant understands he's subject to a mandatory minimum
14 sentence of 60 months for Count Five.

15 The parties agree that there is an additional 60-month
16 consecutive sentence for Count Seven pursuant to guideline §
17 2K2.4(b) and then once -- otherwise, there are no specific
18 offense characteristics, guideline adjustments or departures
19 that do apply in this case.

20 The Plea Agreement contemplates that the United States
21 will move for a downward reduction of three levels for the
22 defendant's acceptance of responsibility provided that he --
23 his conduct continues to reflect his acceptance of
24 responsibility.

25 The Plea Agreement, in Paragraph 19, acknowledges that

1 the defendant has been advised of his rights in limited
2 circumstances to appeal the conviction and sentence in this
3 case, but that he is giving up his appeal rights, including
4 collateral appeal rights under 28 United States Code § 2255.
5 He does, however -- however, he does reserve the right to
6 appeal any punishment in excess of the statutory maximum, or
7 any sentence to the extent it exceeds the maximum of the
8 sentencing imprisonment range determined under the guidelines
9 in accordance with the stipulations and computations in this
10 agreement. However, there is nothing that bars the defendant
11 from perfecting any legal remedies that he may have on appeal
12 regarding ineffective assistance of counsel or prosecutorial
13 misconduct.

14 It outlines the waiver of the statute of limitations
15 in Paragraph 20.

16 It outlines the factual basis and relevant conduct in
17 Paragraph 21.

18 It indicates that the parties are free to advise the
19 Court about matters not expressly addressed herein.

20 It advises the defendant of the consequences of
21 breaching the Plea Agreement, that this agreement is only
22 binding upon the United States Attorney's Office for the
23 Northern District of Ohio and no other federal, state, or local
24 government.

25 And on the final page of it, it outlines the defendant

1 is not only satisfied with the assistance of counsel, but this
2 agreement is completely and voluntarily entered by the
3 defendant, Your Honor.

4 THE COURT: Thank you, Mr. Kolansky.

5 Mr. Ross, I direct your attention to Paragraph 19 of
6 the Plea Agreement. It begins over on Page 7 and runs over to
7 Page 8.

8 Do you understand that if I recommend the acceptance
9 of the Plea Agreement and the district judge accepts my
10 recommendation, you cannot withdraw your guilty plea?

11 THE DEFENDANT: Yes.

12 THE COURT: And, again, referring to Paragraph 19, do
13 you understand you cannot appeal your sentence except under the
14 limited circumstances permitted by Paragraph 19 in the
15 Plea Agreement?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand you cannot contest your
18 sentence by any post-conviction proceeding except under the
19 limited circumstances permitted by Paragraph 19 in the
20 Plea Agreement?

21 THE DEFENDANT: Yes.

22 THE COURT: Mr. Ross, have you and your attorney
23 discussed how the United States Sentencing Commission
24 Guidelines might apply to your case?

25 THE DEFENDANT: Yes.

1 THE COURT: You understand -- do we have up there the
2 paragraphs about the guidelines? Are they published? I'm not
3 seeing them.

4 Thank you.

5 I direct your attention to Paragraph 16 of the
6 Plea Agreement.

7 Do you understand that this paragraph discusses the
8 application of the sentencing guidelines to your case under
9 this Plea Agreement?

10 THE DEFENDANT: Yes.

11 THE COURT: And have you discussed with your attorney
12 what range of sentence you may receive under the Plea Agreement
13 and the advisory sentencing guidelines?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Albenze, well, have you given Mr. Ross
16 an estimate of the sentence that he might receive under the
17 Plea Agreement and the advisory guidelines?

18 MR. ALBENZE: From my understanding, I believe
19 Attorney Kinlin went over all of that with Mr. Ross, and I
20 believe that was somewhere in the area of around 7 years if I'm
21 not mistaken.

22 THE COURT: Mr. Kolansky, is that a reasonable
23 estimate given the factors currently known?

24 MR. KOLANSKY: Yes, Your Honor. I think it would be a
25 little bit more than 7, but that is close.

1 I can tell the Court that I have provided Mr. Kinlin
2 with my guidelines computation. I know that he has discussed
3 that with Mr. Ross as well and, so, I believe Mr. Ross has gone
4 over this with Mr. Kinlin based on my discussions.

5 THE COURT: Mr. Ross, do you understand that the Court
6 will not be able to determine the guideline calculation until
7 after a Pre-Sentence Report has been completed and you and the
8 government have had an opportunity to challenge the facts
9 reported by the probation officer?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that the sentence
12 imposed may be different from any estimate you may have
13 received from your attorney or the attorney for the government?

14 THE DEFENDANT: Yes.

15 THE COURT: You understand that after it's been
16 determined what guideline range applies to your case the
17 district judge has the authority in some circumstances to
18 impose a sentence that is less severe or more severe than the
19 sentence called for by the guidelines?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you also understand that under some
22 circumstances you or the government may have a right to appeal
23 any sentence imposed, and in your case that right is limited by
24 Paragraph 19 in the Plea Agreement?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand that parole's been
2 abolished, and if you are sentenced to parole, you will not be
3 released on parole?

4 I -- I got that wrong. Do you understand that parole
5 has been abolished and if you are sentenced to prison, you will
6 not be released on parole?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. Very well.

9 And, again, I ask you, Mr. Ross, do you understand
10 that the Court will not be able to determine the guideline
11 sentence for your case until after a Pre-Sentence Report has
12 been completed and you and the government have had an
13 opportunity to challenge the facts reported by the probation
14 officer?

15 Mr. Ross?

16 Mr. Ross, do you understand that?

17 The video seems to be -- audio, rather, seems to be
18 off.

19 MR. ALBENZE: Can you hear us now?

20 THE COURT: Yes, I can hear you now.

21 MR. ALBENZE: Okay. Sorry about that. There you go.

22 THE DEFENDANT: Yes, I understand.

23 THE COURT: And do you -- do you understand the
24 sentence imposed may be different from any estimate you may
25 have received from your attorney or the attorney for the

1 government?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that after it's been
4 determined the guideline range that applies to your case, the
5 district judge has the authority in some circumstances to
6 impose a sentence that is more severe or less severe than the
7 sentence called for by the advisory guidelines?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you understand that under some
10 circumstances you and the government may have a right to appeal
11 any sentence imposed, and in your case that right is limited by
12 Paragraph 18 in the Plea Agreement?

13 THE DEFENDANT: Yes.

14 THE COURT: Once again, do you understand that
15 parole's been abolished and if you are sentenced to prison, you
16 will not be released on parole?

17 THE DEFENDANT: Yes.

18 THE COURT: Finally, having discussed your rights with
19 you, do you still want to proceed with a guilty plea?

20 THE DEFENDANT: Yes.

21 THE COURT: I will now review with you that portion of
22 the Plea Agreement in which you stipulate to facts as they
23 relate to your conduct as charged in the Indictment. As I do
24 so, you will have the opportunity to correct any facts that you
25 believe are not correct.

1 And let's go back over to the Plea Agreement. And I
2 direct your attention to the factual basis portion of the
3 Plea Agreement, which appears in Paragraph 21, over on Page 8,
4 and that continues over onto Page 9 and also in Paragraph 22,
5 which begins on Page 9 and ends on Page 10.

6 Now, you have initialed each page of the factual basis
7 portion of the Plea Agreement indicating your agreement with
8 the facts as set forth therein. And I ask you, do you, in
9 fact, agree with the factual basis portion of the
10 Plea Agreement as it appears in Paragraphs 21 and 22 of the
11 Plea Agreement?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you wish to make any changes in the
14 factual basis portion of the Plea Agreement as set forth on
15 Page 9 -- or 8 through 10 and Paragraphs 21 and 22?

16 THE DEFENDANT: No.

17 THE COURT: Mr. Kolansky, is there any right or any
18 procedural provision that I have failed to account for prior to
19 receiving the plea?

20 MR. KOLANSKY: I don't believe so, Your Honor. Thank
21 you.

22 THE COURT: And, Mr. Albenze, is there any right or
23 any procedural provision that I have failed to account for
24 before receiving the plea?

25 MR. ALBENZE: No, Your Honor.

1 THE COURT: Mr. Ross, I'm prepared to receive your
2 plea. Do you want to speak again with your attorney before I
3 ask you what your plea is?

4 THE DEFENDANT: No.

5 THE COURT: Do you have any questions for me before I
6 ask you what your plea is?

7 THE DEFENDANT: One. When you say the Court has the
8 right to have a different sentence, it could be more or it
9 could also be less?

10 THE COURT: Yes. Under some circumstances.

11 Mr. Kolansky, could you elaborate on that in the
12 context of this case?

13 MR. KOLANSKY: Certainly. I think it starts,
14 Your Honor, with the fact that the sentencing recommendations
15 of the parties that are outlined in this Plea Agreement, they
16 are not binding on the Court at the time of sentencing. The
17 Court is -- is tasked with implementing a sentence that the
18 Court believes to be sufficient but not greater than necessary
19 to effect the purposes of sentencing and in so doing is
20 required to consider the factors outlined in 3550 -- Title 18
21 United States Code § 3553(a). Should the Court determine that
22 these guidelines are either too high or too low, the Court has
23 the authority to sentence -- to vary above or to vary below the
24 guideline computation that we have outlined in this
25 Plea Agreement.

1 Additionally, the Plea Agreement, at Paragraph 14,
2 indicates that there is no agreement about the sentence or the
3 sentencing range between the parties. Now, practically, what
4 that means is that Mr. Ross, and Mr. Kinlin on his behalf, or
5 Mr. Albenze if he's at sentencing on Mr. Ross' behalf, has the
6 authority from this Plea Agreement to argue for a sentence
7 below the sentencing guidelines range, to present the Court
8 with mitigating facts and factors for the Court to consider in
9 an effort to convince the Court that the guidelines are too
10 high. Practically speaking, that also means that the United
11 States has the authority, based on the Plea Agreement, to argue
12 to the Court that the sentencing guideline range is too low and
13 to ask the Court to sentence above. But at the end of the day,
14 the sentencing decision lies with the Court after reviewing
15 those factors and taking into account everything and, of
16 course, through his sentence, to sentence the defendant to a
17 sentence that is sufficient but not greater than necessary to
18 effect the purposes of sentencing.

19 THE COURT: Thank you, Mr. Kolansky.

20 Mr. Albenze, do you have anything to add on that?

21 MR. ALBENZE: No, Your Honor. That was a very good
22 representation of the procedure.

23 THE COURT: And, Mr. Ross, having had that
24 explanation, are you satisfied that your question has been
25 addressed?

1 Again, we're having a problem with -- we're having a
2 problem with your audio.

3 MR. ALBENZE: All right. Is that better?

4 THE COURT: Yes.

5 THE DEFENDANT: Okay. I was very satisfied with that
6 explanation, I appreciate it, and I understand completely.

7 THE COURT: All right. Very good.

8 Now, having advised you of your rights, having found
9 you competent, and having found a factual basis for your plea,
10 how do you plead to the counts in the Indictment, guilty or not
11 guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: It's my finding that the defendant,
14 Brian Ross, is fully competent to and capable of entering an
15 informed plea; that he is aware of the nature of the charges
16 brought against him and the consequences of his plea; and his
17 plea of guilty to the charges in the Indictment in this case is
18 a knowing and voluntary plea supported by an independent basis
19 in fact containing each of the essential elements of the
20 offenses charged. I therefore recommend to the district judge
21 that he approve the Plea Agreement, accept Mr. Ross' plea, and
22 adjudge him guilty of the charges in the Indictment in this
23 case.

24 A Pre-Sentence Investigation Report will be prepared
25 prior to sentencing. It's in your best interest to cooperate

1 with the probation officer in furnishing information for that
2 report since the report will be important in the decision as to
3 what your sentence will be. You and your attorney will have a
4 right and have an opportunity to examine that report before
5 your sentencing and, at the time of sentencing, to comment on
6 the report, including challenges to any facts in the report
7 that you believe are not correct.

8 Your sentence has been scheduled. . . Mr. DeVan?

9 THE DEFENDANT: Yes, Your Honor. Sentencing will be
10 on January 25th, 2022, at 10:00 a.m. in Courtroom 15A before
11 District Judge Donald B. Nugent.

12 THE COURT: Mr. Kolansky, it appears that Mr. Ross is
13 on -- is released on bond with conditions. Do you have any
14 objection to he continuing to be so released pending his
15 sentencing?

16 MR. KOLANSKY: No objection, Your Honor. Thank you.

17 THE COURT: Mr. Ross, you will be permitted to remain
18 released under the conditions of your bond.

19 Do you understand each condition of your bond?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand if you violate any of
22 the conditions of release, you may be arrested --

23 THE DEFENDANT: Yes.

24 THE COURT: -- and held in custody until further order
25 of the Court, and incur a fine or penalty in addition to those

1 for the offenses charged?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. Anything further for the
4 United States?

5 MR. KOLANSKY: No, Your Honor. Thank you.

6 THE COURT: And, Mr. Albenze, anything further on
7 behalf of Mr. Ross?

8 MR. ALBENZE: Nothing, Your Honor. Thank you.

9 THE COURT: There being no further business before the
10 Court, we are adjourned.

11 MR. KOLANSKY: Thank you, Your Honor.

12 MR. ALBENZE: Thank you.

13 (Proceedings adjourned at 2:46:06 p.m.)

14

15 **C E R T I F I C A T E**

16 I certify that the foregoing is a correct transcript
17 of the record of proceedings in the above-entitled matter
prepared from my stenotype notes.

18 /s/ Heather K. Newman
19 HEATHER K. NEWMAN, RMR, CRR

10-18-2021
DATE

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